The decision seems in harmony with the general equitable principles involved, since courts of equity whenever possible, construe reservations or covenants in a deed as appurtenant to land retained rather than in gross, and hold that by acceptance of the deed by the grantee, an equitable easement is created, as against him, in favor of third persons subsequently acquiring an interest in the land retained by the grantor, although to such third persons the reservation or covenant may not convey any strict legal right. *Hodge* v. *Boothby,* 48 Me. 68; *Winston* v. *Johnson,* 42 Minn. 398; *Allen* v. *Lester,* 80 N. Y. Supp. 1053; *Tinker* v. *Forbes,* 136 Ill. 221; *Newbold* v. *Peabody Heights Co.,* 70 Md. 493. If the intention of the parties as ascertained from the words of the grant, the situation of the property, or the surrounding circumstances, can fairly be construed as creating an easement appurtenant, it will be so held. *Whitney* v. *Union Ry. Co.,* 11 Gray 359; *Peck* v. *Conway,* 119 Mass. 546.

ELECTION—CANDIDATES—OATH—CONSTITUTIONALITY OF PRIMARY LAW.—Writ of certiorari to review the denial of a writ of mandamus to compel the respondent to certify to the names chosen by the Socialist Party Convention. *Held,* that the Kent County Primary Election Law which requires all candidates for office to declare their candidacy on oath is unconstitutional. Writ granted. *Dapper* v. *Smith, County Clerk* (1904), — Mich. —, 101 N. W. 60.

Article XVIII, § 1 of the State Constitution provides the oath which shall be required for qualification to an offiec and further provides that no other oath shall be required. Where the constitution states the qualifications of an officeholder the state legislatures can neither add to nor otherwise change them. *Thomas* v. *Owens,* 4 Md. 189, 223; *Page* v. *Hardin,* 8 B. Mon. (Ky.) 648, 661. If the above provision (Loc. Acts 1903 p. 142 No. 326) of the Kent County Primary Law were valid then the franchise rights of the voters would be limited, for they would be unable to vote for any person who would not declare his candidacy. No man who was not seeking an office could be elected to it. In the case of *Attorney General* v. *Common Council,* 58 Mich. 213, the doctrine is announced that the election franchise is the same in all parts of the state and can not be essentially changed in any locality by legislation to regulate its exercise.

EQUITY—JURISDICTION TO RESTRAIN INJUNCTION PROCEEDING DENIED.—In a suit to enjoin defendants from taking out an injunction to restrain complainants from playing baseball. *Held,* that injunction would not lie. *Robertson* v. *Montgomery Baseball Ass'n* (1904), — Ala.—, 37 So. Rep. 388.

This presents rather a striking situation. Had an injunction been here awarded it would have been just as competent for the defendants, had they moved first, to have had the present suit enjoined, or the complainants to have had them restrained from so doing, and so on. The case involves entirely different principles from those employed in proceedings to enjoin actions at law. (See 3 POMEROY'S EQ. JUR. §§ 1360 et seq.), and the decision is unquestionably sound. *Balogh* v. *Lyman,* 39 N. Y. Supp. 780, 783, 6 App. Div. 271, 276. In *Prudential Assurance Co.* v. *Thomas,* L. R. 3 Ch. 74, equitable proceedings against the holder of certain funds, were

enjoined to protect the interests of a claimant who had not been made a party thereto; but, in the principal case, it is apparent that any substantial right which the complainant could urge in support of his claim, would be available as a defense in the suit sought to be enjoined. Under such circumstances it is clear that equity has no jurisdiction. *Pond* v. *Harwood,* 139 N. Y. 111, 34 N. E. Rep. 768; *Erie R. R.* v. *Ramsey,* 45 N. Y. 637; *Hall* v. *Fisher,* 1 Barb. 53; *Ellsworth* v. *Cook,* 8 Paige 643; *Saxton* v. *Wyckoff,* 6 Paige 182.

ESTATES OF DECEDENTS—FUNERAL EXPENSES OF MARRIED WOMAN—LIABILITY OF SURVIVING HUSBAND.—The administrator of a deceased married woman was sued to recover a sum alleged to be due as part of her funeral expenses. The husband of the deceased was living at the time of her death. *Held,* that when a woman dies leaving a husband surviving, the husband is primarily liable and not the separate estate of the deceased for the payment of her funeral expenses. *Kenyon* v. *Brightwell* (1904), — Ga. —, 48 S. E. Rep. 124.

It was the duty of the surviving husband at common law to provide a funeral for his deceased wife in keeping with his social position, and he was liable to third persons incurring expenses for this purpose. *Jenkins* v. *Tucker,* 1 H. Bl. 90; *Bradshaw* v. *Beard,* 12 C. B. N. S. 344; *Ambrose* v. *Kerrison,* 10 C. B. 776. An interesting question has been raised in several of the states as to the effect of the legislation creating separate property rights in married women upon the liability of the surviving husband for the funeral expenses of his deceased wife. The decisions are not altogether in harmony on this point, but the weight of authority seems to be that the surviving husband remains primarily liable as at common law, the liability being based upon the duty of the husband to furnish necessaries for the wife. *Brand's Exr's* v. *Brand,* 109 Ky. 326; *Smyley* v. *Reese,* 15 Ala. 90; *Staple's Appeal,* 52 Conn. 425. This liability is made in a few states to depend upon the solvency of the surviving husband. *Galloway* v. *McPherson,* 67 Mich. 546; *Scott's Estate,* 15 Pa. Co. Ct. 67. In other jurisdictions the statutory provisions for the payment of decedent's debts specifying funeral expenses have been construed to apply to the estates of deceased married women. *Buxton* v. *Barrett,* 14 R. I. 40; *McClellan* v. *Filson,* 44 Ohio St. 184; *Constantinides* v. *Walsh,* 146 Mass. 281. This case is of especial interest from the fact that it raises the question for the first time in the state of Georgia and also from the fact that while the statutory provisions for the payment of decedent's debts in Georgia are very similar to those in Massachusetts, Rhode Island and Ohio, they are construed differently.

EXECUTOR DE SON TORT—RIGHT TO EQUITABLE RELIEF.—Decedent's son was appointed administrator by a court lacking jurisdiction, and in good faith entered upon the administration of the estate. Against an action by the legal administrator for conversion of the property he interposed a cross bill in equity in which he sought to be credited for expenses, fees, etc. *Held,* that the cross bill must be dismissed. *Slate* v. *Henkle* (1904) — Ore. —, 78 Pac. Rep. 325.